

IN THE DISTRICT COURT OF MUSKOGEE COUNTY
STATE OF OKLAHOMA

HENRY PRICE TRUST, successor co-trustees Henry Price Bradley and Patricia Bradley Scott, on behalf of itself and all others similarly situated,

Plaintiffs,

v.

PLAINS ALL AMERICAN GP LLC, a Delaware limited liability company, PLAINS ALL AMERICAN PIPELINE, L.P., a Texas limited partnership, and PLAINS MARKETING, L.P., A Texas limited partnership,

Defendants.

Case No. CS-2019-376

FILED BY PAULA SEXTON
DISTRICT COURT CLERK

OCT 11 2019

MUSKOGEE COUNTY, OK

PETITION

Plaintiff Henry Price Trust, through successor co-trustees Henry Price Bradley and Patricia Bradley Scott ("Plaintiff"), for itself and all others similarly situated, files this Petition against Plains All American GP LLC, Plains All American Pipeline, L.P., and Plains Marketing, L.P. (collectively "Defendants"). Plaintiff alleges and asserts the following against Defendants.

SUMMARY OF ACTION

1. This class action concerns Defendants' willful and ongoing violations of Oklahoma law related to payment of oil-and-gas production proceeds ("O&G Proceeds") to persons with a legal interest in the acreage under a well that entitles such person(s) ("Owner") to payments of O&G Proceeds.

2. Plaintiff is an Owner in one or more oil-and-gas wells in Oklahoma in which Defendants have incurred an obligation pay O&G Proceeds pursuant to leases or pooling orders (the “Oklahoma Wells”).

3. Specifically, Plaintiff is an Owner in an Oklahoma Well, which is located in the SW/4 of Section 10–3S–5W in Stephens County.

4. Defendants were first purchasers of oil production from said well and were obligated to pay O&G Proceeds, including revenue and interest, to Plaintiff.

5. The oil-and-gas industry has historically been rife with abuse, by lessees, operators, purchasers, and entities responsible for paying O&G Proceeds. Such companies routinely delay or suspend payments to Owners to, among other things, obtain interest-free loans at the expense of Owners. Because they control the relationship and the information, these companies are able to easily and successfully employ these tactics.

6. Oklahoma law attempts to redress and prevent these abuses by requiring companies, like Defendants here, to pay interest on “proceeds from the sale of oil or gas production or some portion of such proceeds [that] are not paid prior to the end of the applicable time periods provided” by statute. 52 O.S. § 570.10(D); *see generally id.* § 570 *et seq.* (the “Production Revenue Standards Act” or the “Act”).

7. The Act provides Owners a uniform, absolute right to interest on Untimely Payments,¹ regardless of whether such payments were suspended to address title marketability issues or for any other reason that the payments were made outside of the time limits imposed by the Act. The Act’s plain language imposes automatic interest on such Untimely Payments.

¹ “Untimely Payments” is defined in the Class Definition.

Compliance with this statutory requirement is not optional and there is no requirement that Owners first make a written or oral demand.

8. Defendants are well aware of their statutory obligations to pay interest on Untimely Payments, but they have consistently ignored these obligations and blatantly violated Oklahoma law. Indeed, on information and belief, Defendants routinely delay payment of production proceeds and interest payments as part of an overarching scheme to avoid their statutory obligations.

9. For these reasons, Plaintiff files this class action against Defendants to obtain relief for itself and all similarly situated Owners who received Untimely Payments for which Defendants did not pay interest as required by the Act.

10. Plaintiff files this class action against Defendants for breach of their statutory obligation to pay interest and for fraud. Additionally, Plaintiff seeks an accounting, disgorgement, and injunctive relief against Defendants.

PARTIES

11. Plaintiff Henry Price Trust was formed on December 8, 1960, under the laws of the state of Oklahoma.

12. Henry Price Bradley and Patricia Bradley Scott are successor co-trustees of Plaintiff.

13. Plaintiff is an Owner in Oklahoma Wells, and is entitled to payment of O&G Proceeds from those wells.

14. Defendants are a group of affiliated, foreign entities doing business in the State of Oklahoma.

15. Defendant Plains All American Pipeline, L.P. is a foreign limited partnership formed under the laws of Texas and maintains its principal place of business in Houston, Texas. Defendant Plains All American Pipeline, L.P. may be served through its registered agent: Corporation Service Company, 10300 Greenbriar Place, Oklahoma City, OK 73159.

16. Defendant Plains All American GP LLC is a Delaware limited liability company and maintains its principal place of business in Houston, Texas. Defendant Plains All American GP LLC is the general partner of Defendant Plains All American Pipeline, L.P. Defendant Plains All American GP LLC is registered to do business in Oklahoma and may be served through its registered agent: Corporation Service Company, 10300 Greenbriar Place, Oklahoma City, OK 73159.

17. Defendant Plains Marketing, L.P. is a foreign limited partnership formed under the laws of Texas and maintains its principal place of business in Houston, Texas. Defendant Plains Marketing, L.P. is a wholly owned subsidiary of Defendant Plains All American Pipeline, L.P. Defendant Plains Marketing, L.P. is registered to do business in Oklahoma and may be served through its registered agent: Corporation Service Company, 10300 Greenbriar Place, Oklahoma City, OK 73159.

18. At all times relevant to the claims asserted in this Petition, Defendants were/are the first purchaser and/or operators of production from oil and gas wells in the State of Oklahoma. Defendants are obligated to pay O&G Proceeds to Plaintiff and the putative class.

JURISDICTION AND VENUE

19. This Court has subject-matter jurisdiction under 52 O.S. § 570.14(A).

20. This Court has personal jurisdiction over Defendants because they are foreign entities registered to do business in Oklahoma, they transact substantial business in Oklahoma, and because they distribute O&G Proceeds across Oklahoma.

21. Venue is proper in this Court under 12 O.S. § 137 because Defendants are foreign entities that own property in Muskogee County.

22. Jurisdiction is proper in this Court because the amount in controversy exceeds \$10,000, exclusive of attorney fees, litigation expenses, costs, and interest. Named Plaintiff's claims, however, are less than \$75,000.

CLASS ACTION ALLEGATIONS

23. The above allegations are incorporated by reference.

24. Plaintiff brings this action as the representative of a Class under 12 O.S. §§ 2023(B)(2)–(3). The Class is comprised of:

All non-excluded persons or entities who: (1) received Untimely Payments from Defendants (or Defendants' designees) for oil proceeds from Oklahoma wells and (2) who have not already been paid statutory interest on the Untimely Payments. An "Untimely Payment" for purposes of this class definition means payment of proceeds from the sale of oil production from an oil and gas well after the statutory periods identified in Okla. Stat. tit 52, § 570.10(B)(1) (i.e., commencing not later than six (6) months after the date of first sale, and thereafter not later than the last day of the second succeeding month after the end of the month within which such production is sold). Untimely Payments do not include: (a) payments of proceeds to an owner under Okla. Stat. tit 52, § 570.10(B)(3) (minimum pay); (b) prior period adjustments; or (c) pass-through payments.

The persons or entities excluded from the Class are: (1) agencies, departments, or instrumentalities of the United States of America or the State of Oklahoma; (2) publicly traded oil and gas companies and their affiliates; (3) persons or entities that Plaintiff's counsel may be prohibited from representing under Rule 1.7 of the Oklahoma Rules of Professional Conduct; and (4) officers of the court.

25. Upon information and belief, absent Class members entitled to interest owing on Defendants' Untimely Payments number in the thousands. Thus, the Class is so numerous that joinder of all members is impracticable.

26. The questions of fact and law common to the Class include:

- a. Whether Plaintiff and the Class own legal interests in the Oklahoma acreages upon which Defendants have an obligation to pay O&G Proceeds;
- b. Whether, under Oklahoma law, Defendants owed interest to Plaintiff and the Class on any Untimely Payments;
- c. Whether Defendants' failure to pay interest to Plaintiff and the Class on any Untimely Payments constitutes a violation of the Act;
- d. Whether Defendants defrauded Plaintiff and the Class by knowingly withholding statutory interest; and
- e. Whether Defendants are obligated to pay interest on future Untimely Payments.

27. Plaintiff's claims are typical of the Class because each Class member's claims are identical.

28. Defendants treated Plaintiff and Class in the same way by failing to pay the required interest on Untimely Payments.

29. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff's interests do not conflict with the interests of the Class. Plaintiff is represented by counsel who are skilled and experienced in oil-and-gas matters, accounting, and complex civil litigation, including oil-and-gas royalty class actions.

30. The averments of fact and questions of law in this Petition are common to the members of the Class and predominate over any questions affecting only individual members.

31. A class action is superior to other available methods for the fair and efficient adjudication of this controversy for the following reasons:

- a. The questions of law and fact are so numerous across the Class that there is no reason why individual members of the Class would want to control the prosecution of their own claims at their own expense;
- b. To Plaintiff's knowledge, there is no pending litigation by any individual Class member, with the same scope of Class membership sought in this Petition against Defendants relating to their failure to pay interest owing on the Untimely Payments of O&G Proceeds as required by law;
- c. All parties and the judiciary have a strong interest in resolving these matters in one forum without the need for multiple actions;
- d. The difficulties in managing this case as a class action will be slight in relation to the personal benefits to be achieved on behalf of each and every Class member—not only those who can afford to bring their own actions; and
- e. Absent a class action, Plaintiff and the Class members may never fully discover the wrongful acts of Defendants, the extent of their respective financial losses, or the financial benefit they are unwittingly providing to Defendants.

GENERAL ALLEGATIONS AND FACTUAL BACKGROUND

32. The above allegations are incorporated by reference.

33. As first purchasers, Defendants O&G Proceeds from numerous oil-and-gas wells throughout Oklahoma. Defendants owed payments of O&G Proceeds to Plaintiff and Class members as a result of the mineral production from such wells.

34. For decades, oil-and-gas producers or first purchasers would for various reasons delay or decline to distribute the proceeds from the first sale to interest owners and use those funds for their own purposes until they were ultimately distributed, if at all.” 2015 OK AG 6, ¶ 2 (Sept. 1, 2015) (citing Si M. Bondurant, *To Have and to Hold: The Use and Abuse of Oil and Gas Suspense Accounts*, 3 OKLA. CITY U. L. REV. 1, 4 (2006)). Holders of the production proceeds, however, frequently and intentionally avoided making any reasonable efforts to locate interest owners or notify them of their interest. *See id.* Instead, they would “suspend” their

revenue payments until demanded and, in the meanwhile, gain the benefit of the possession of those funds. *See id.* Moreover, even when they eventually made the revenue payments, the holders often would not pay interest. *See id.* “[T]here was a great incentive to delay royalty payments” and “many producers routinely suspended royalties and delayed payment for many months and even years to take advantage of the interest earned during the float between the receipt of sales proceeds and disbursement of royalties.” *See id.* (citing Bondurant at 18). This not only deprived interest owners of the time-value of the money owed to them, it also gave rise to “an ever increasing case load of litigation between royalty owners and purchasers . . . precipitated by the use of suspense accounts.” *Id.* (citing *Hull v. Sun Refining & Mktg. Co.*, 1989 OK 168, ¶ 9, 789 P.2d 1272, 1277).

35. As a result of this conduct, many states—including Oklahoma—enacted statutes to curtail this abuse. In Oklahoma, the Act requires Defendants to make payments within certain time periods. Further, the Act requires Defendants to pay interest on any Untimely Payments, regardless of why such payments were made outside of the statutory time periods. The Act gives Owners an absolute right to interest on Untimely Payments, and the Act’s plain language imposes an obligation to include interest on Untimely Payments. Compliance with this statute is not optional and does not require a prior written or oral demand by Owners.

36. Plaintiff and Class members were entitled to payment of O&G Proceeds from Defendants and, pursuant to the Act, were further entitled to interest on any Untimely Payments made by Defendants.

37. Plaintiff and Class members placed their trust and confidence in Defendants to pay them the O&G Proceeds to which they were entitled, including any interest owed thereon. Defendants had superior access to information regarding O&G Proceeds and the

amounts Defendants owed to Plaintiff and the Class, including interest, on Untimely Payments.

38. When Defendants made Untimely Payments to Plaintiff and Class Members, Defendants failed to pay the interest owed pursuant to the Act. Indeed, on information and belief, Defendants' failure to pay the statutorily required interest on Untimely Payments continues to this day as part of an ongoing scheme to avoid paying money clearly owed under Oklahoma law.

39. Defendants are not permitted to take advantage of their relationships with Plaintiff and Class members to realize unauthorized benefits or profits at the expense of Plaintiff and the Class. Defendants have used their position as the holder of Plaintiffs and the Class's O&G Proceeds to avoid Defendants' statutory obligation to pay the statutory interest due to Plaintiff and the Class in the event of Untimely Payments. As such, Defendants have improperly treated Plaintiff and the Class's O&G Proceeds as an interest-free loan without their consent.

40. Upon information and belief, Defendants ignored their obligation under the Act to regard the O&G Proceeds Defendants owed to Plaintiff and the Class as separate and distinct from Defendants' other cash assets. Rather, these proceeds were comingled with Defendants' other cash assets. As such, Defendants improperly, unfairly, and in violation of the law profited from its deliberate refusal to pay statutory interest to Plaintiff and the Class.

41. In short, Defendants blatantly ignored Oklahoma law regarding the payment of interest on Untimely Payments. Further, Defendants did not hold the O&G Proceeds for the benefit of the owners legally entitled thereto (i.e. Plaintiff and the Class) and, instead, held

the O&G Proceeds for Defendants' own benefit. Defendants have abused their position with Plaintiff and the Class.

42. Plaintiff and the Class have been damaged by Defendants' unlawful acts and omissions.

43. Defendants' wrongdoing—which clearly violates Oklahoma law—is ongoing and continues to this day.

CAUSES OF ACTION

Count I – Breach of Statutory Obligation to Pay Interest

44. The above allegations are incorporated by reference.

45. Plaintiff brings this cause of action on behalf of itself and the Class.

46. Plaintiff and the Class were legally entitled to the payments of O&G Proceeds from Defendants, as first purchasers, for production from wells owned or operated in Oklahoma.

47. Section 570.10 of the Act requires Defendants to hold O&G Proceeds from the sale of oil-and-gas production for the benefit of Owners who are entitled to those O&G Proceeds.

48. Section 570.10 of the Act also requires payment of O&G Proceeds to be made in a timely manner according to the applicable time periods in the Act.

49. If the holder of O&G Proceeds subject to the Act fails, for any reason, to make timely payments to those entitled to receive such O&G Proceeds, the holder must pay interest on such O&G Proceeds when the payment is eventually made.

50. Defendants held O&G Proceeds belonging to Plaintiff and the Class, and Defendants failed to timely pay O&G Proceeds owing to Plaintiff and the Class.

51. In violation of the Act, when Defendants ultimately made their Untimely Payments to Plaintiff and the Class, Defendants did not pay the interest owing to Plaintiff and the Class.

52. Defendants' failure to pay interest owing on its Untimely Payments of O&G Proceeds was knowing and intentional or was the result of Defendants' gross negligence.

53. Defendants' failure to pay interest owing on their Untimely Payments of O&G Proceeds has caused Plaintiff and the Class to suffer harm.

Count II – Fraud

54. The above allegations are incorporated by reference.

55. Plaintiff brings this cause of action on behalf of itself and the Class.

56. As first purchasers, Defendants were responsible for distributing O&G Proceeds from numerous oil-and-gas wells throughout Oklahoma. Thus, Defendants knowingly and intentionally took on the duties associated with such interests, including the duty to pay O&G Proceeds to Owners in accordance with Oklahoma law.

57. Instead of complying with Oklahoma law, Defendants took on such duties with the intent to deceive Owners and to not pay the full O&G Proceeds owed. Specifically, Defendants knew they owed interest on Untimely Payments, but they knowingly and intentionally suppressed the fact that interest was owed to Plaintiff and the Class members. Further, Defendants intended to avoid their obligation to pay the statutorily mandated interest and only pay when an Owner specifically requests payment of the statutory interest.

58. Plaintiff and the Class relied on and trusted Defendants to pay them the full O&G Proceeds to which they were entitled under Oklahoma law.

59. Defendants held all of the information relating to Untimely Payments and the interest owed on those payments, but it never disclosed to Plaintiff or the Class that such interest was owed.

60. Plaintiff and the Class have been damaged by Defendants' actions and violations of law.

61. Defendants' failure to pay interest it owes to Plaintiff and the Class is a result of Defendants' actual, knowing, and willful intent to deceive the members of the Class and to deprive such interest from persons the Defendants knew, or were aware, were legally entitled to such interest under the Act. Thus, Defendants should be required to pay punitive damages as a method of punishing Defendants and deterring such conduct by others.

Count III – Accounting and Disgorgement

62. The above allegations are incorporated by reference.

63. Plaintiff requests an accounting on its behalf and on behalf of the Class.

64. Plaintiff requests that the Court enter an order directing Defendants to provide an accounting to Plaintiff and the Class members that discloses: (a) the amount of accrued interest that Plaintiff and each Class member should have been paid by Defendants, and (b) the method for calculating such amounts.

65. Defendants' payment of interest owed to Plaintiff and the Class does not provide an adequate legal remedy for the wrongs committed by Defendants because it will not deprive Defendants of the ill-gotten gains Defendants have obtained through their unlawful behavior.

66. The principles of equity and good conscience do not permit Defendants to retain the benefits derived from Defendants' improper and unlawful use of interest owed on Untimely Payments made to Plaintiff and the Class.

67. Thus, Plaintiff requests that the Court enter an order directing Defendants to disgorge themselves of any and all benefits derived from Defendants' improper and unlawful use of Plaintiff and the Class's interest payments, including interest that has accrued on such interest since the time in which the Defendants made the Disputed Payments to Plaintiff and the Class.

Count IV – Injunctive Relief

68. The above allegations are incorporated by reference.

69. Plaintiff seeks injunctive relief on its behalf and on behalf of the Class.

70. Unless enjoined by the Court, Defendants will continue their pattern and practice of failing to pay interest owed on Untimely Payments to Plaintiff and the Class members.

71. Defendants have utilized their superior knowledge and control of information regarding Plaintiff and the Class's entitlement to interest on Untimely Payments to engage in a fraudulent scheme with regard to Defendants' willful and intentional failure to pay such interest. As such, Defendants' wrongdoing is ongoing, and injuries to Plaintiff and the Class in the future are irreparable in that the vast majority of Class members remain unaware of their right to receive interest on Untimely Payments.

72. No adequate remedy exists at law for Defendants' continuing violations of the Act.

73. Plaintiff requests that the Court enter a permanent injunction, ordering Defendants to pay interest as required by law when Defendants make future Untimely Payments to Plaintiff, the Class, and Owners.

74. Defendants will not suffer any harm as a result of the Court's granting this request for injunctive relief because Defendants' compliance with the order will be consistent with their legal obligations and duties to Plaintiff and the Class.


PRAYER FOR RELIEF

Wherefore, premises considered, Plaintiff seeks:

1. An order certifying and allowing this case to proceed as a class action with Plaintiff as class representative and the undersigned counsel as class counsel;
2. An order requiring Defendants to pay Plaintiff and the Class members actual damages to fully compensate them for losses sustained as a direct, proximate, and producing cause of Defendants' breaches and unlawful conduct, including, without limitation, the compounded interest on Untimely Payments as required by law;
3. An order requiring Defendants to provide Plaintiff and the Class with an accounting;
4. An order requiring Defendants to disgorge themselves of the ill-gotten gains Defendants have obtained through the unlawful use of interest owed to Plaintiff and the Class;
5. An order requiring Defendants to pay interest in the future, as required by law, to Plaintiff and the Class;

6. An order awarding punitive damages as determined by the jury and in accordance with Oklahoma law on each of Defendants' wrongful acts, as alleged in this Petition;
7. An order requiring Defendants to pay the Class's attorney fees and litigation costs as provided by statute; and
8. Such costs and other relief as this Court deems appropriate.

Respectfully Submitted,



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